HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No.4969 of 2006

Between:

N. Venkata Venu Gopal Rao …Petitioner.

AND

Debts Recovery Tribunal,

represented by its Recovery Officer,

Visakhapatnam & others. …Respondents.

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:: O R D E R ::

Counsel for the Petitioner : Sri Sai Gangadhar Chamarty

Counsel for Respondents 1 & 3 : None

Counsel for Respondent No.2 : Sri P.S.Rajasekhar

17th MARCH 2006

Per G.S.Singhvi, C.J.

In this petition, the petitioner has prayed for issuance of a writ of prohibition

restraining Debts Recovery Tribunal, Visakhapatnam (for short 'the Tribunal') from ordering withdrawal of the amount lying in the credit of C.C.No.188 of 2002 on the file of VIIIth Metropolitan Magistrate, Vijayawada.

Respondent No.3 – Kola Venkata Krishna Mohan is said to have borrowed Rs. 6,10,000/- from the petitioner and agreed to repay the same with interest at the rate of 24% per annum. He executed two promissory notes on 13-7-1999 and 24-7-1999 as collateral security for repayment of the amount. On being asked by the petitioner, respondent No.3 issued cheque dated 30-11-1999 for a sum of Rs.7,01,160/-, but when the same was presented in the Bank, the latter refused to honour it on the ground that funds were insufficient. Thereupon, the petitioner filed complaint under Section 138 of the Negotiable Instruments Act in the Court of Ist Additional Chief Metropolitan Magistrate, Vijayawada. The same was registered as C.C.No.173 of 2001. Vide judgment dated 12-8-2005, the learned trial Court convicted respondent No.3 and also awarded Rs.8,00,000/- to the petitioner by way of compensation. Similar complaint filed by the petitioner's wife namely, Smt. N. Lakshmi Rani, which was registered as C.C.No.174 of 2004, was allowed by the trial Court. The petitioner is also said to have lodged a complaint under Sections 420, 468 and 471 IPC, which was registered as C.C.No.188 of 2002 and is pending in the Court of VIIIth Metropolitan Magistrate, Vijayawada.

During the pendency of the proceedings initiated by the petitioner and his wife, respondent No.2, Andhra Bank filed O.A.No.929 of 2002 before the Tribunal under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for recovery of Rs.30,41,162.45p. from respondent No.3. Respondent No.2 also filed I.A.No.133 of 2002 for attachment of the amounts lying in deposit in C.C.No.188 of 2002 on the file of Court of VIIIth Metropolitan Magistrate, Vijayawada. By an order dated 19-8-2002, the Tribunal ordered attachment of the amounts lying in C.C.No.188 of 2002. On 4-1-2006, Presiding Officer of the Tribunal sent a letter to VIIIth Metropolitan Magistrate, Vijayawada to remit the amounts to the Tribunal. On coming to know of this development, the petitioner filed C.R.P.SR.No.3067 of 2006 under Article 227 of the Constitution of India, which was dismissed by the learned Single Judge on 3-2-2006 on the ground of availability of alternative remedy. Thereafter, the petitioner filed I.R.SR.Nos.487 and 488 of 2006 before the Tribunal.

The reason why the petitioner has chosen to invoke the jurisdiction of this

Court under Article 226 of the Constitution of India at this stage is that the Visakhapatnam Bench of the Tribunal is not functioning due to non-posting of judicial member and as a result of that, the application for stay filed by him has not been taken up for hearing. He has pleadead that if the amounts lying in C.C.No.188 of 2002 are transferred to the Tribunal, he would suffer irreparable injury.

Sri P.S. Rajasekhar, learned counsel for respondent No.2 very fairly states that his client will not insist on transfer of the amounts lying in C.C.No.182 of 2002 on the file of VIII Metropolitan Magistrate till Visakhapatnam Bench of the Tribunal becomes functional.

In view of the statement made by Sri Rajasekhar, the writ petition is disposed of as infructuous.

While disposing of the writ petition, we deem it proper to observe that Government of India, Department of Economic Affairs (Banking Division) should take notice of the fact that Visakhapatnam Bench of the Tribunal is not functioning and take remedial steps in this regard.

G.S. SINGHVI, C.J.

17th March, 2006.

G.BHAVANI PRASAD, J.

Note:- The Court Officer is directed to furnish a copy of this order to Sri A.Rajashekar Reddy, Asst. Solicitor General representing the Central Government so that he may communicate the same to the concerned Department .

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